

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOHN THOMAS FALVEY,

Plaintiff

v.

MARTY FREESE, et. al.,

Defendants.

Case No. 3:23-CV-00125-ART-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

On March 22, 2023 Plaintiff John Thomas Falvey ("Plaintiff") filed a civil rights complaint with the Court. (ECF No. 1-1.) However, Plaintiff did not submit an application to proceed *in forma pauperis* ("IFP"). Thus, the Court ordered that Plaintiff either submit an IFP application or pay the full filing fee by May 8, 2023. (ECF No. 3.) The Court cautioned Plaintiff that his failure to timely comply with the order would subject his case to a dismissal without prejudice. (*Id.*) To date, Plaintiff has not complied with the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833

¹ This Report and Recommendation is made to the Honorable Anne R. Traum, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order).

2 In determining whether to dismiss an action for lack of prosecution, failure to obey
3 a court order, or failure to comply with local rules, the Court must consider several factors:
4 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
6 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
7 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
8 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

9 In the instant case, the Court finds that the first two factors, the public's interest in
10 expeditiously resolving this litigation and the Court's interest in managing the docket,
11 weigh in favor of dismissal. The third factor, risk of prejudice to defendants, also weighs
12 in favor of dismissal, since a presumption of injury arises from the occurrence of
13 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
14 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy
15 favoring disposition of cases on their merits—is greatly outweighed by the factors in favor
16 of dismissal discussed herein. Finally, a Court's warning to a party that his failure to obey
17 the Court's order will result in dismissal satisfies the "consideration of alternatives"
18 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
19 at 1424. In the order directing that Plaintiff file a complete IFP application or pay the full
20 filing fee, the order also stated that if Plaintiff failed to timely comply, the case would be
21 subject to dismissal without prejudice. (ECF No. 3.) Thus, Plaintiff had adequate warning
22 that dismissal would result from his noncompliance with the Court's order.

23 Accordingly, it is recommended that this action be dismissed without prejudice
24 based on Plaintiff's failure to pay the filing fee or file a fully complete IFP application in
25 compliance with this Court's March 22, 2023 order (ECF No. 3).

26 The parties are advised:

27 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
28 Practice, the parties may file specific written objections to this Report and

1 Recommendation within fourteen days of receipt. These objections should be entitled
2 "Objections to Magistrate Judge's Report and Recommendation" and should be
3 accompanied by points and authorities for consideration by the District Court.

4 2. This Report and Recommendation is not an appealable order and any
5 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
6 District Court's judgment.

7 **I. RECOMMENDATION**

8 For the reasons stated above, **IT IS RECOMMENDED** that this action be
9 **DISMISSED** without prejudice; and,

10 **IT IS FURTHER RECOMMENDED** that the Clerk of Court **ENTER JUDGMENT**
11 accordingly.

12 **DATED:** May 12, 2023.

13 
14 **UNITED STATES MAGISTRATE JUDGE**